

AMENDED IN ASSEMBLY MAY 2, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1302

Introduced by Assembly Member Jerome Horton
(Coauthor: Senator Alquist)

February 22, 2005

~~An act relating to economic development.~~ *An act to amend Sections 11340, 11340.1, 11346.5, 11346.9, 11349, and 11349.1 of the Government Code, relating to agency regulations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1302, as amended, Jerome Horton. ~~Economic development.~~
State agency regulations.

The Administrative Procedure Act sets forth the procedures and requirements a state agency is required to follow when adopting, amending, or repealing a regulation. The act requires an agency to submit to the Office of Administrative Law each adopted, amended, or repealed regulation and a statement of reasons that includes, among other matters, an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small businesses. It requires the office to review all regulations submitted to it and make determinations using specified standards, as defined.

This bill would require an agency, when adopting, amending, or repealing a regulation, to submit to the office a finding supported by substantial evidence that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private individuals, businesses, and small businesses than the adopted regulation, and an explanation setting forth the reasons

for rejecting any proposed alternative that would have been as effective as the adopted regulation but impose fewer burdens on private individuals, businesses, and small businesses. It would require the office, when reviewing regulations submitted to it, to make determinations using the standard of burden, defined to mean that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private individuals, businesses, and small businesses than the adopted regulation. It would make other conforming changes.

~~Existing law sets forth various programs to promote economic development opportunities in the state.~~

~~This bill would state the intent of the Legislature to ensure a vibrant and growing small business sector to create more good paying jobs in a dynamic economy.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~1 SECTION 1. It is the intent of the Legislature to ensure a
2 vibrant and growing small business sector to create more good
3 paying jobs in a dynamic economy.~~

~~4 SECTION 1. Section 11340 of the Government Code is
5 amended to read:~~

~~6 11340. The Legislature finds and declares as follows:~~

~~7 (a) There has been an unprecedented growth in the number of
8 administrative regulations in recent years.~~

~~9 (b) The language of many regulations is frequently unclear
10 and unnecessarily complex, even when the complicated and
11 technical nature of the subject matter is taken into account. The
12 language is often confusing to the persons who must comply with
13 the regulations.~~

~~14 (c) Substantial time and public funds have been spent in
15 adopting regulations, the necessity for which has not been
16 established.~~

~~17 (d) The imposition of prescriptive standards upon private
18 persons and entities through regulations where the establishment
19 of performance standards could reasonably be expected to
20 produce the same result has placed an unnecessary burden on~~

1 ~~California citizens and discouraged innovation, research, and~~
2 ~~development of improved means of achieving desirable social~~
3 ~~goals.~~

4 ~~(e)~~

5 (d) There exists no central office in state government with the
6 power and duty to review regulations to ensure that they are
7 written in a comprehensible manner, are authorized by statute,
8 and are consistent with other law.

9 ~~(f)~~

10 (e) Correcting the problems that have been caused by the
11 unprecedented growth of regulations in California requires the
12 direct involvement of the Legislature as well as that of the
13 executive branch of state government.

14 ~~(g)~~

15 ~~(f) The complexity and lack of clarity in unnecessary burden~~
16 ~~imposed by many regulations put small businesses, which do not~~
17 ~~have the resources to hire experts to assist them, at a distinct~~
18 ~~disadvantage.~~

19 SEC. 2. Section 11340.1 of the Government Code is amended
20 to read:

21 11340.1. (a) The Legislature therefore declares that it is in
22 the public interest to establish an Office of Administrative Law
23 ~~which that~~ shall be charged with the orderly review of adopted
24 regulations. It is the intent of the Legislature that the purpose of
25 such review shall be to reduce the number of administrative
26 regulations and to improve the quality of those regulations ~~which~~
27 ~~that~~ are adopted. It is the intent of the Legislature that agencies
28 shall actively seek to reduce the unnecessary regulatory burden
29 on private individuals, *businesses, and small businesses by*
30 *adopting the least burdensome, effective alternative* and ~~entities~~
31 by substituting performance standards for prescriptive standards
32 wherever performance standards can be reasonably expected to
33 be as effective and less burdensome, and that this substitution
34 shall be considered during the course of the agency rulemaking
35 process. It is the intent of the Legislature that neither the Office
36 of Administrative Law nor the court should substitute its
37 judgment for that of the rulemaking agency as expressed in the
38 substantive content of adopted regulations. It is the intent of the
39 Legislature that while the Office of Administrative Law will be
40 part of the executive branch of state government, that the office

1 work closely with, and upon request report directly to, the
2 Legislature in order to accomplish regulatory reform in
3 California.

4 (b) It is the intent of the Legislature that the California Code of
5 Regulations made available on the Internet by the office pursuant
6 to Section 11344 include complete authority and reference
7 citations and history notes.

8 *SEC. 3. Section 11346.5 of the Government Code is amended*
9 *to read:*

10 11346.5. (a) The notice of proposed adoption, amendment, or
11 repeal of a regulation shall include the following:

12 (1) A statement of the time, place, and nature of proceedings
13 for adoption, amendment, or repeal of the regulation.

14 (2) Reference to the authority under which the regulation is
15 proposed and a reference to the particular code sections or other
16 provisions of law that are being implemented, interpreted, or
17 made specific.

18 (3) An informative digest drafted in plain English in a format
19 similar to the Legislative Counsel's digest on legislative bills.
20 The informative digest shall include the following:

21 (A) A concise and clear summary of existing laws and
22 regulations, if any, related directly to the proposed action and of
23 the effect of the proposed action.

24 (B) If the proposed action differs substantially from an
25 existing comparable federal regulation or statute, a brief
26 description of the significant differences and the full citation of
27 the federal regulations or statutes.

28 (C) A policy statement overview explaining the broad
29 objectives of the regulation and, if appropriate, the specific
30 objectives.

31 (4) Any other matters as are prescribed by statute applicable to
32 the specific state agency or to any specific regulation or class of
33 regulations.

34 (5) A determination as to whether the regulation imposes a
35 mandate on local agencies or school districts and, if so, whether
36 the mandate requires state reimbursement pursuant to Part 7
37 (commencing with Section 17500) of Division 4.

38 (6) An estimate, prepared in accordance with instructions
39 adopted by the Department of Finance, of the cost or savings to
40 any state agency, the cost to any local agency or school district

1 that is required to be reimbursed under Part 7 (commencing with
2 Section 17500) of Division 4, other nondiscretionary cost or
3 savings imposed on local agencies, and the cost or savings in
4 federal funding to the state.

5 For purposes of this paragraph, “cost or savings” means
6 additional costs or savings, both direct and indirect, that a public
7 agency necessarily incurs in reasonable compliance with
8 regulations.

9 (7) If a state agency, in proposing to adopt, amend, or repeal
10 any administrative regulation, makes an initial determination that
11 the action may have a significant, statewide adverse economic
12 impact directly affecting business, including the ability of
13 California businesses to compete with businesses in other states,
14 it shall include the following information in the notice of
15 proposed action:

16 (A) Identification of the types of businesses that would be
17 affected.

18 (B) A description of the projected reporting, recordkeeping,
19 and other compliance requirements that would result from the
20 proposed action.

21 (C) The following statement: “The (name of agency) has made
22 an initial determination that the (adoption/amendment/repeal) of
23 this regulation may have a significant, statewide adverse
24 economic impact directly affecting business, including the ability
25 of California businesses to compete with businesses in other
26 states. The (name of agency) (has/has not) considered proposed
27 alternatives that would lessen any adverse economic impact on
28 business and invites you to submit proposals. Submissions may
29 include the following considerations:

30 (i) The establishment of differing compliance or reporting
31 requirements or timetables that take into account the resources
32 available to businesses.

33 (ii) Consolidation or simplification of compliance and
34 reporting requirements for businesses.

35 (iii) The use of performance standards rather than prescriptive
36 standards.

37 (iv) Exemption or partial exemption from the regulatory
38 requirements for businesses.”

39 (8) If a state agency, in adopting, amending, or repealing any
40 administrative regulation, makes an initial determination that the

1 action will not have a significant, statewide adverse economic
2 impact directly affecting business, including the ability of
3 California businesses to compete with businesses in other states,
4 it shall make a declaration to that effect in the notice of proposed
5 action. In making this declaration, the agency shall provide in the
6 record facts, evidence, documents, testimony, or other evidence
7 upon which the agency relies to support its initial determination.

8 An agency's initial determination and declaration that a
9 proposed adoption, amendment, or repeal of a regulation may
10 have or will not have a significant, adverse impact on businesses,
11 including the ability of California businesses to compete with
12 businesses in other states, shall not be grounds for the office to
13 refuse to publish the notice of proposed action.

14 (9) A description of all cost impacts, known to the agency at
15 the time the notice of proposed action is submitted to the office,
16 that a representative private person or business would necessarily
17 incur in reasonable compliance with the proposed action.

18 If no cost impacts are known to the agency, it shall state the
19 following:

20 "The agency is not aware of any cost impacts that a
21 representative private person or business would necessarily incur
22 in reasonable compliance with the proposed action."

23 (10) A statement of the results of the assessment required by
24 subdivision (b) of Section 11346.3.

25 (11) The finding prescribed by subdivision (c) of Section
26 11346.3, if required.

27 (12) A statement that the action would have a significant effect
28 on housing costs, if a state agency, in adopting, amending, or
29 repealing any administrative regulation, makes an initial
30 determination that the action would have that effect. In addition,
31 the agency officer designated in paragraph (14), shall make
32 available to the public, upon request, the agency's evaluation, if
33 any, of the effect of the proposed regulatory action on housing
34 costs.

35 (13) A statement that, *prior to adopting the proposed action*,
36 the adopting agency ~~must~~ *is required to* determine that no
37 reasonable alternative considered by the agency or that has
38 otherwise been identified and brought to the attention of the
39 agency would be more effective in carrying out the purpose for
40 which the action is proposed or would be as effective and less

1 burdensome to affected private ~~persons~~ *individuals, businesses,*
2 *and small businesses* than the proposed action.

3 (14) The name and telephone number of the agency
4 representative and designated backup contact person to whom
5 inquiries concerning the proposed administrative action may be
6 directed.

7 (15) The date by which comments submitted in writing must
8 be received to present statements, arguments, or contentions in
9 writing relating to the proposed action in order for them to be
10 considered by the state agency before it adopts, amends, or
11 repeals a regulation.

12 (16) Reference to the fact that the agency proposing the action
13 has prepared a statement of the reasons for the proposed action,
14 has available all the information upon which its proposal is
15 based, and has available the express terms of the proposed action,
16 pursuant to subdivision (b).

17 (17) A statement that if a public hearing is not scheduled, any
18 interested person or his or her duly authorized representative may
19 request, no later than 15 days prior to the close of the written
20 comment period, a public hearing pursuant to Section 11346.8.

21 (18) A statement indicating that the full text of a regulation
22 changed pursuant to Section 11346.8 will be available for at least
23 15 days prior to the date on which the agency adopts, amends, or
24 repeals the resulting regulation.

25 (19) A statement explaining how to obtain a copy of the final
26 statement of reasons once it has been prepared pursuant to
27 subdivision (a) of Section 11346.9.

28 (20) If the agency maintains an Internet Web site or other
29 similar forum for the electronic publication or distribution of
30 written material, a statement explaining how materials published
31 or distributed through that forum can be accessed.

32 (b) The agency representative designated in paragraph (14) of
33 subdivision (a) shall make available to the public upon request
34 the express terms of the proposed action. The representative shall
35 also make available to the public upon request the location of
36 public records, including reports, documentation, and other
37 materials, related to the proposed action. If the representative
38 receives an inquiry regarding the proposed action that the
39 representative cannot answer, the representative shall refer the
40 inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 4. Section 11346.9 of the Government Code is amended to read:

11346.9. Every agency subject to this chapter shall do the following:

(a) Prepare and submit to the office with the adopted regulation a final statement of reasons that shall include all of the following:

(1) An update of the information contained in the initial statement of reasons. If the update identifies any data or any technical, theoretical or empirical study, report, or similar document on which the agency is relying in proposing the adoption, amendment, or repeal of a regulation that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period, the agency shall comply with Section 11347.1.

(2) A determination as to whether adoption, amendment, or repeal of the regulation imposes a mandate on local agencies or school districts. If the determination is that adoption, amendment, or repeal of the regulation would impose a local mandate, the agency shall state whether the mandate is reimbursable pursuant to Part 7 (commencing with Section 17500) of Division 4. If the agency finds that the mandate is not reimbursable, it shall state the reasons for that finding.

(3) A summary of each objection or recommendation made regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or the reasons for making no change. This requirement applies only to objections or recommendations specifically directed at the agency's proposed action or to the procedures followed by the agency in proposing or adopting the action. The agency may aggregate and summarize repetitive or irrelevant comments as a group, and may respond to repetitive comments or summarily

1 dismiss irrelevant comments as a group. For the purposes of this
2 paragraph, a comment is “irrelevant” if it is not specifically
3 directed at the agency’s proposed action or to the procedures
4 followed by the agency in proposing or adopting the action.

5 (4) A ~~determination with supporting information~~ *finding*
6 *supported by substantial evidence* that no alternative considered
7 by the agency would be more effective in carrying out the
8 purpose for which the regulation is proposed or would be as
9 effective and less burdensome to affected private ~~persons~~
10 *individuals, businesses, and small businesses* than the adopted
11 regulation.

12 (5) An explanation setting forth the reasons for rejecting any
13 proposed alternatives that would ~~lessen the adverse economic~~
14 ~~impact~~ *be as effective as the proposed regulation but impose*
15 *fewer burdens on private individuals, businesses, and small*
16 *businesses.*

17 (b) Prepare and submit to the office with the adopted
18 regulation an updated informative digest containing a clear and
19 concise summary of the immediately preceding laws and
20 regulations, if any, relating directly to the adopted, amended, or
21 repealed regulation and the effect of the adopted, amended, or
22 repealed regulation. The informative digest shall be drafted in a
23 format similar to the Legislative Counsel’s Digest on legislative
24 bills.

25 (c) A state agency that adopts or amends a regulation
26 mandated by federal law or regulations, the provisions of which
27 are identical to a previously adopted or amended federal
28 regulation, shall be deemed to have complied with this section if
29 a statement to the effect that a federally mandated regulation or
30 amendment to a regulation is being proposed, together with a
31 citation to where an explanation of the provisions of the
32 regulation can be found, is included in the notice of proposed
33 adoption or amendment prepared pursuant to Section 11346.5.
34 However, the agency shall comply fully with this chapter with
35 respect to any provisions in the regulation which the agency
36 proposes to adopt or amend that are different from the
37 corresponding provisions of the federal regulation.

38 (d) If an agency determines that a requirement of this section
39 can be satisfied by reference to an agency statement made
40 pursuant to Sections 11346.2 to 11346.5, inclusive, the agency

1 may satisfy the requirement by incorporating the relevant
2 statement by reference.

3 *SEC. 5. Section 11349 of the Government Code is amended to*
4 *read:*

5 11349. The following definitions govern the interpretation of
6 this chapter:

7 (a) “Necessity” means the record of the rulemaking
8 proceeding demonstrates by substantial evidence the need for a
9 regulation to effectuate the purpose of the statute, court decision,
10 or other provision of law that the regulation implements,
11 interprets, or makes specific, taking into account the totality of
12 the record. For purposes of this standard, evidence includes, but
13 is not limited to, facts, studies, and expert opinion.

14 (b) “Authority” means the provision of law ~~which~~ *that* permits
15 or obligates the agency to adopt, amend, or repeal a regulation.

16 (c) “Clarity” means written or displayed so that the meaning of
17 regulations will be easily understood by those persons directly
18 affected by them.

19 (d) “Consistency” means being in harmony with, and not in
20 conflict with or contradictory to, existing statutes, court
21 decisions, or other provisions of law.

22 (e) “Reference” means the statute, court decision, or other
23 provision of law ~~which~~ *that* the agency implements, interprets, or
24 makes specific by adopting, amending, or repealing a regulation.

25 (f) “Nonduplication” means that a regulation does not serve
26 the same purpose as a state or federal statute or another
27 regulation. This standard requires that an agency proposing to
28 amend or adopt a regulation must identify any state or federal
29 statute or regulation ~~which~~ *that* is overlapped or duplicated by
30 the proposed regulation and justify any overlap or duplication.
31 This standard is not intended to prohibit state agencies from
32 printing relevant portions of enabling legislation in regulations
33 when the duplication is necessary to satisfy the clarity standard in
34 paragraph (3) of subdivision (a) of Section 11349.1. This
35 standard is intended to prevent the indiscriminate incorporation
36 of statutory language in a regulation.

37 (g) “Burden” means *that no alternative would be more*
38 *effective in carrying out the purpose for which the regulation is*
39 *proposed or would be as effective and less burdensome to*

1 *affected private individuals, businesses, and small businesses*
2 *than the adopted regulation.*

3 *SEC. 6. Section 11349.1 of the Government Code is amended*
4 *to read:*

5 11349.1. (a) The office shall review all regulations adopted,
6 amended, or repealed pursuant to the procedure specified in
7 Article 5 (commencing with Section 11346) and submitted to it
8 for publication in the California Code of Regulations Supplement
9 and for transmittal to the Secretary of State and make
10 determinations using all of the following standards:

- 11 (1) Necessity.
- 12 (2) Authority.
- 13 (3) Clarity.
- 14 (4) Consistency.
- 15 (5) Reference.
- 16 (6) Nonduplication.
- 17 (7) *Burden.*

18 In reviewing regulations pursuant to this section, the office
19 shall restrict its review to the regulation and the record of the
20 rulemaking proceeding. The office shall approve the regulation
21 or order of repeal if it complies with the standards set forth in this
22 section and with this chapter.

23 (b) In reviewing proposed regulations for the criteria in
24 subdivision (a), the office may consider the clarity of the
25 proposed regulation in the context of related regulations already
26 in existence.

27 (c) The office shall adopt regulations governing the procedures
28 it uses in reviewing regulations submitted to it. The regulations
29 shall provide for an orderly review and shall specify the methods,
30 standards, presumptions, and principles the office uses, and the
31 limitations it observes, in reviewing regulations to establish
32 compliance with the standards specified in subdivision (a). The
33 regulations adopted by the office shall ensure that it does not
34 substitute its judgment for that of the rulemaking agency as
35 expressed in the substantive content of adopted regulations.

36 (d) The office shall return any regulation subject to this
37 chapter to the adopting agency if any of the following occur:

- 38 (1) The adopting agency has not prepared the estimate
39 required by paragraph (6) of subdivision (a) of Section 11346.5

1 and has not included the data used and calculations made and the
2 summary report of the estimate in the file of the rulemaking.

3 (2) The agency has not complied with Section 11346.3.

4 (3) The adopting agency has prepared the estimate required by
5 paragraph (6) of subdivision (a) of Section 11346.5, the estimate
6 indicates that the regulation will result in a cost to local agencies
7 or school districts that is required to be reimbursed under Part 7
8 (commencing with Section 17500) of Division 4, and the
9 adopting agency fails to do any of the following:

10 (A) Cite an item in the Budget Act for the fiscal year in which
11 the regulation will go into effect as the source from which the
12 Controller may pay the claims of local agencies or school
13 districts.

14 (B) Cite an accompanying bill appropriating funds as the
15 source from which the Controller may pay the claims of local
16 agencies or school districts.

17 (C) Attach a letter or other documentation from the
18 Department of Finance which states that the Department of
19 Finance has approved a request by the agency that funds be
20 included in the Budget Bill for the next following fiscal year to
21 reimburse local agencies or school districts for the costs
22 mandated by the regulation.

23 (D) Attach a letter or other documentation from the
24 Department of Finance which states that the Department of
25 Finance has authorized the augmentation of the amount available
26 for expenditure under the agency's appropriation in the Budget
27 Act which is for reimbursement pursuant to Part 7 (commencing
28 with Section 17500) of Division 4 to local agencies or school
29 districts from the unencumbered balances of other appropriations
30 in the Budget Act and that this augmentation is sufficient to
31 reimburse local agencies or school districts for their costs
32 mandated by the regulation.

33 (e) The office shall notify the Department of Finance of all
34 regulations returned pursuant to subdivision (d).

35 (f) The office shall return a rulemaking file to the submitting
36 agency if the file does not comply with subdivisions (a) and (b)
37 of Section 11347.3. Within three state working days of the
38 receipt of a rulemaking file, the office shall notify the submitting
39 agency of any deficiency identified. If no notice of deficiency is
40 mailed to the adopting agency within that time, a rulemaking file

1 shall be deemed submitted as of the date of its original receipt by
2 the office. A rulemaking file shall not be deemed submitted until
3 each deficiency identified under this subdivision has been
4 corrected.

5 This subdivision shall not limit the review of regulations under
6 this article, including, but not limited to, the conformity of
7 rulemaking files to subdivisions (a) and (b) of Section 11347.3.

O